

DOCKET FILE COPY ORIGINAL

Ameritech Motion to Strike  
Ameritech-Michigan  
July 7, 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
 )  
Application by Ameritech )  
Michigan Pursuant to )  
Section 271 of the )  
Telecommunications Act of )  
1996 to Provide In-Region, )  
InterLATA Services in )  
Michigan )

CC Docket No. 97-137

RECEIVED

JUL - 7 1997

**MOTION TO STRIKE THE OPPOSITION OF BROOKS FIBER COMMUNICATIONS OF MICHIGAN TO AMERITECH'S APPLICATION**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

On May 21, 1997 Ameritech Michigan

("Ameritech") filed an application for authority to provide in-region interLATA telephone service in Michigan, pursuant to section 271 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 271. On June 10, 1997, Brooks Fiber Communications of Michigan, Inc. ("Brooks Fiber") filed its opposition (the "Opposition") to Ameritech's application. In that Opposition, Brooks Fiber made numerous factual assertions regarding alleged deficiencies in Ameritech's application. (See, e.g., Exhibits B, C, G, K, L, M, N and Q). None of these allegations is supported by affidavits or sworn statements and, accordingly, the Commission should strike the Brooks Fiber Opposition in its entirety.

No. of Copies rec'd  
List ABCDE

043

The Commission's December 6, 1996, Public Notice established the procedural requirements that apply to the processing of Section 271 applications.<sup>1</sup> That Public Notice required each application to "conform to the Commission's general rules relating to applications" (i.e., 47 C.F.R. §§ 1.49 and 1.741-1.749), and to include "an affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate."<sup>2</sup> The Public Notice did not specifically require that parties opposing the application also support their factual assertions with affidavits or verified statements, but such a requirement is required by any notion of fairness and is explicit throughout the Commission's rules governing other types of license applications.<sup>3</sup> In fact, the vast majority of commenters provided affidavits or sworn statements to support their factual statements.

---

<sup>1</sup> PROCEDURES FOR BELL OPERATING COMPANY APPLICATIONS UNDER NEW SECTION 271 OF THE COMMUNICATIONS ACT, Public Notice, FCC 96-469 (rel. Dec. 6, 1996) ("Public Notice").

<sup>2</sup> Id. at 3.

<sup>3</sup> See, e.g., Sections 1.962(g) (allegations of fact in a petition to deny in private radio license proceeding must be supported by affidavit, except for those facts of which official notice must be taken); 1.2108(b) and (c) (same for spectrum auction rules); 22.130(a)(3) (same for CMRS licenses); 24.830(a)(3) (same for PCS licenses); 25.154(a)(4) (same for satellite licenses); and 73.3584(b) (same for broadcast license applications).

Comments in opposition to an application under Section 271 are the procedural equivalent of the petition to deny that is provided for in other licensing proceedings under the Act. For example, Part 63 of the Commission's rules, which implements Section 214 of the Act, contains two such provisions. Sections 63.20(d) and 63.52(c) specifically provide that factual allegations in a petition to deny an application for international and domestic authority must be supported by affidavit. This is particularly important because Section 214 covers grants of authority for all extensions of existing telephone lines. Section 271 simply covers a subset of the circumstances covered by Section 214 -- the extension of a BOC's domestic lines outside the LATAs in which it provides local exchange service. Obviously, if a verification requirement is imposed in proceedings on applications for authority to extend intraLATA lines, it must equally be imposed in proceedings involving applications to extend lines interLATA.

Moreover, basic fairness requires that in any administrative proceeding the procedural requirements imposed on one party should apply with equal force to the other party. It would be unfair to a Section 271 applicant to allow competitors to attempt to prevent approval of the application on the basis of hearsay and innuendo.

The unfairness of relying on unsupported allegations is compounded by the fact that other parties, particularly the Antitrust Division of the United States Department of Justice, have relied on the allegations contained in the Brooks Fiber Opposition in the comments they have filed in this proceeding.

The public interest also requires that those opposing the Section 271 application make at least a *prima facie* showing that any information they submit is reliable. Given the strict 90-day statutory period for reviewing Section 271 applications, any other rule would create considerable and unnecessary difficulties for the Commission. The need to ascertain the reliability of such claims would undermine this Commission's ability to render a decision within that 90-day period.

Finally, Brooks' unsupported factual assertions are inextricably intertwined with, and indeed form the basis for, each of the legal arguments in the Opposition. Therefore, the Commission should strike the Opposition in its entirety.


CONCLUSION

For the reasons set forth above, the Commission should grant this motion and strike Brooks Fiber's Opposition. In addition, it should accord no weight to those portions of the comments of any other parties that rely on factual assertions in the Opposition.

Respectfully submitted,

Kelly R. Welsh  
John T. Lenahan  
Michael J. Karson  
Larry R. Peck  
Gary L. Phillips  
AMERITECH CORPORATION  
30 South Wacker Drive  
Chicago, Illinois 60606  
(312) 750-5000

Stephen M. Shapiro  
Theodore A. Livingston  
Douglas A. Poe  
John E. Muench  
Christian F. Binnig  
MAYER, BROWN & PLATT  
190 South LaSalle Street  
Chicago, Illinois 60603  
(312) 782-0600

  
Antoinette Cook Bush  
Mark C. Del Bianco  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-7000

Counsel for Ameritech

DATED: July 7, 1997

**CERTIFICATE OF SERVICE**

I, Trent M. Jones do hereby certify that the foregoing Motion to Strike was mailed on this 7th day of July, 1997, via first class U.S. mail to the following:

William F. Caton\*  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Regina Keeney, Chief\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, DC 20054

Chairman Reed E. Hundt\*  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554

Don Russell, Chief  
Telecommunications Task Force  
Antitrust Division  
U.S. Department of Justice  
Room 8104 Judiciary Center  
55 4th Street, N.W.  
Washington, DC 20001

Commissioner James H. Quello\*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554


Todd J. Stein  
Brooks Fiber Communications  
of Michigan, Inc.  
2855 Oak Industrial Drive, NE  
Grand Rapids, MI 49506

Commissioner Susan Ness\*  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, DC 20554

Cheryl A. Tritt\*  
Charles H. Kennedy  
Morrison & Foerster, LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Commissioner Rachelle B. Chong\*  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, DC 20554

ITS, Inc.\*  
1231 20th Street, N.W.  
Washington, DC 20037

  
\_\_\_\_\_  
Trent M. Jones

\*Hand Delivery